



Staff Report

May 9, 2017

TO: Honorable Mayor and Town Council
FROM: Roger Carroll, Treasurer/Finance Director
DATE: May 2, 2017
RE: Placer County Community Choice Aggregation Program

ACTION REQUESTED

There are three actions required:

1. Hear public comment and hold first reading of the ordinance of the Town of Loomis authorizing the implementation of a community choice aggregation program.
2. Adopt the resolution of the Town of Loomis authorizing the execution and delivery of an amended and restated joint exercise of powers agreement for the Sierra Valley Energy Authority.
3. Designate a Council member to sit on the joint powers authority board.

BACKGROUND

At the March 14, 2017, Town Council meeting, the Council receive a presentation by Placer County Treasurer, Jenine Windenhausen regarding the Community Choice Aggregation program and staff was directed to bring back an ordinance for adoption for the town to join the Sierra Valley Energy authority (JPA). Since that meeting, both the City of Colfax and the City of Rocklin have joined the JPA with the County. The City of Auburn proceeding forward with the JPA

The Town's attorney, Jeff Mitchell, reviewed the documents and we have attached them to this staff report. Both Jeff and I have a couple issues with the joint powers agreement. Jeff spoke with the County's counsel and I spoke with Jenine, and I believe we should still move forward with adoption. These are the issues:

1. The JPA agreement states that "Action by the Authority Board will be taken by majority vote of the Board Members present." However, a board member can request a "weighted vote by shares." Shares are determined by annual energy use of the CCA users within a member's jurisdiction, divided by the total energy used by all members combined. Clearly, in a weighted vote, Loomis's vote will count for little.

2. The JPA agreement grants the JPA eminent domain powers. Jenine assured me that this was "standard language" in JPA agreements and that there is very little chance that the JPA would need property in Loomis for future power facilities. Jeff felt that this part of the agreement could be modified to require permission of any member whose property owner's land was being taken. Both Jenine and the County counsel would like to have all members of the JPA in place before any amendments are made to the agreement. Finally, use of eminent domain requires a two-thirds vote of the members, rather than a simple majority.
3. While the agreement states that the costs of the authority will be recovered through charges to the customers, the authority can assess the members. This requires two thirds vote of the members, rather than a simple majority.

If, after joining the JPA, the Town felt that any part of the JPA agreement was too onerous to comply with, and if the JPA failed to amend the agreement to the Town's satisfaction, the Town can leave the JPA without penalty.

Furthermore, since Rocklin has joined the JPA, the County no longer has a standalone supermajority: it would need another city to vote along with it to get the two-thirds vote.

CEQA AND ENVIRONMENTAL COMPLIANCE

The action of a local government to join SVEA is an administrative action that will not result in a direct physical change to the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by the California Environmental Quality Act (CEQA) Guideline Section 15378. CEQA Guidelines Section 15378(b)(5) states that a project does not include "Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment." Per CEQA Guidelines Section 15378, there cannot be a project unless the proposed action will result in "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."

Financial Considerations

There are no financial requirements.

Attachments:

Excerpts from the Staff Report on March 14, 2017

Ordinance of the Town of Loomis authorizing the implementation of a community choice aggregation program

Resolution of the Town of Loomis authorizing the execution and delivery of an amended and restated joint exercise of powers agreement for the Sierra Valley Energy Authority

Signature page and Executed Joint Power Authority agreement with the Sierra Valley Energy Authority

From the Staff report to the Town Council on March 14, 2017

CCA Overview

Assembly Bill 117 was passed in 2002 authorizing Community Choice Aggregation (CCA) programs to operate in California. This legislation enables California cities, counties, and joint powers agencies to aggregate the electricity demand of its constituents and to procure or generate the electricity to meet their electricity demand. The CCA sets rates, determines rebates and incentives, and can provide other energy related programs and services based on local goals and priorities. Most PG&E customer programs continue to be available to the CCA's customers. The host utility, Pacific Gas & Electric (PG&E), continues to provide transmission, distribution, maintenance and repair, and billing services.

The main purposes and benefits of CCA programs in Placer County are that it:

- offers consumers a choice of energy providers and sources,
- provides local control over rates, programs, rebates and incentives,
- provides an opportunity to utilize and develop local energy resources for the benefit of Placer County residents and businesses,
- has the potential to provide economic benefits, such as job creation, economic incentives and other programs with the potential to provide additional benefits such as environmental and social benefits based on local goals and priorities.

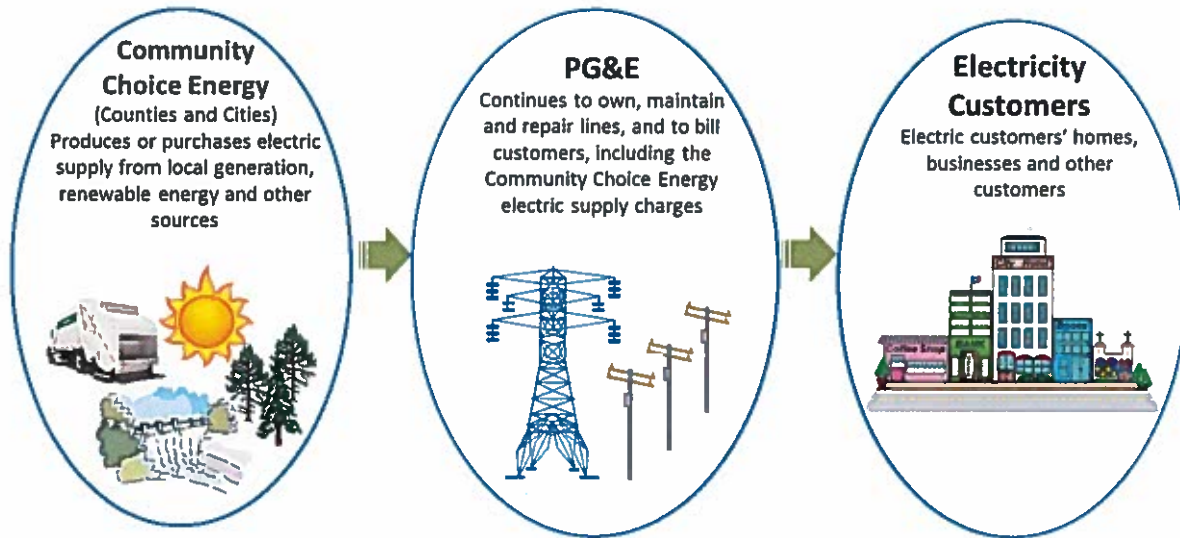
Under California law, enrollment in a CCA is automatic for electricity account holders. However, if customers do not want to participate in the CCA and prefer to continue purchasing their power from PG&E, customers may opt-out of the CCA program at any time. In the jurisdictions that have implemented a CCA, the participation rates have been high, ranging from 90% to 99%.

CCA Operations

A CCA replaces energy procurement and energy generation that are currently provided by PG&E. PG&E continues to deliver the energy to the customer. It maintains and repairs the transmission and delivery lines and responds to outages. PG&E also continues to provide customer billing, including the CCA energy charges. Figure 1 illustrates the energy procurement and delivery process under a CCA. The customer does not receive any duplicate charges, because the CCA and PG&E provide unique services.

Figure 1: CCA Energy Delivery Process

Community Choice Energy



The customer receives a PG&E bill that includes the CCA's electric charges. Figure 2 is an example of a PG&E bill with Sonoma Clean Power charges. Item 3 in Figure 2 shows the Sonoma Clean Power Electric Generation Charges. The CCA enters into a service agreement with PG&E for billing services. Each billing cycle, PG&E remits to the CCA the amounts collected for electricity supplied by the CCA.

Figure 2: CCA Billing (Sonoma Clean Energy Example)

ENERGY STATEMENT		1 Account No: 0000001	
www.pge.com/MyEnergy		Statement Date: 09/19/2016	
		Due Date: 10/10/2016	
Service For:		Your Account Summary	
		Amount Due on Previous Statement	\$60.58
		Payment(s) Received Since Last Statement	-60.58
		Previous Unpaid Balance	\$0.00
		2 Current PG&E Electric Delivery Charges	\$37.84
		3 Sonoma Clean Power Electric Generation Charges	20.83
		4 Total Amount Due by 10/10/2016	\$58.67
Questions about your bill? 24 hours per day, 7 days per week Phone: 1-866-743-0333 www.pge.com/MyEnergy		A CCE Program customer's electricity bill charge has several components: 1 Customer retains existing account number 2 PG&E delivery and transmission charges, including PCIA charge 3 Energy Cost (including CCE operational costs) 4 Total bill	
Local Office Address 111 STONY CIR SANTA ROSA, CA 95401			

Existing CCA Programs

There are currently five CCAs operating in California: Marin Clean Energy (2010), Sonoma Clean Power (2015), and Lancaster Choice Energy (2015) (Los Angeles County), CleanPowerSF (San Francisco County) (2016), Peninsula Clean Energy (San Mateo County) (2016), and Silicon Valley Clean Energy (Santa Clara County) (2017). Many other municipalities are currently exploring CCAs. It is estimated that 60% to 80% of investor owned utility territory will come under a CCA within the next five years.

Figure 3: CCAs in Operation, Launching and In-Process



All the CCA programs that have been implemented to-date have rates that are at or below PG&E's rates, and all of them have achieved positive net revenues within two-years of implementation. As local government entities, CCAs do not pay income taxes nor do they make distributions to shareholders. These savings are passed on to customers as discounts or program benefits.

Due Diligence and Financial Analysis Findings

Placer County first began to investigate the feasibility of a CCA in early 2015. The County's analysis and findings of the County's investigation are included in the *Placer County Community Choice Energy Due Diligence and Financial Analysis* which was provided to the Town in September 2016. Based on current market prices, the County's *Due Diligence and Financial Analysis* concluded that a community choice aggregation program could provide both customer cost savings and significant economic development opportunities, as well as, the potential for environmental and social benefits based on local goals and priorities.

The conclusions of the *Due Diligence and Financial Analysis* for a CCA in Placer County are based on due diligence research, risk assessment, energy consumption data analysis, financial

modeling and analysis, and economic analysis. The conclusion is that a CCA in Placer County is financially, economically and operationally feasible in Placer County, and a CCA is highly likely to produce additional economic, environmental and social benefits.

The financial modeling was conservatively constructed and the analysis projects that a CCA can become net revenue positive, and net cash flow positive by the end of the second fiscal year. The financial modeling also indicates that by the end of the fifth fiscal year, net revenues may begin exceeding \$10,000,000 per year.

Placer County has a number of distinct advantages associated with local control of energy supply and management through the implementation of a CCA program. Placer County advantages include a unique mix of natural energy-supply-resources, and financing which is available through the Placer County Treasury. This unique mix of natural and man-made resources includes forest fuel load biomass, hydroelectric power, waste-to-energy, large scale solar, and demand-response programs.

Local control of the power supply for Placer County residents and businesses can result in achieving local policy goals and objectives, based on local needs and priorities. A CCA could be a significant tool, facilitating partnerships to leverage local resources and providing solutions to local challenges. Specifically, a CCA can focus on:

- Utilization of local energy resources, such as hydroelectric power and demand reduction, to keep financial resources from being drained out of the county,
- Development of biomass generation to reduce fire danger and health hazards associated with wildfire smoke. A Placer County CCA that uses electricity generated from local biomass facilities can help address the human and environmental issues of deteriorating forest problems brought on by successive drought years and bark beetle infestations
- Analysis and feasibility of developing energy projects that may significantly reduce the amount of materials going into the landfill and, at the same time, reduce landfill-produced odors by using municipal solid waste streams (garbage) as fuel for energy production

Keeping energy resources and development local, not only provides solutions to existing challenges, it creates new, permanent, non-exportable jobs for Placer County residents and keeps the economic benefits that are derived from these resources from leaving Placer County. Through local control and management, a CCA in Placer County can provide benefits that are not currently being realized. A CCA can also provide many of the services and programs that a municipal utility provides.

The County's analysis and due diligence findings related to implementation and operation of a CCA in Placer County are:

- CCA customers will be provided a choice in electricity providers, and a choice in the source of their electrical power supply that does not currently exist.
- A CCA is financially viable and sustainable under a range of market conditions and various energy supply portfolio compositions and is likely to produce positive net revenues within two years.

- Local resources are expected to provide significant economic, environmental and social benefits including development of local generation, economic development inducements, and customer rebates and incentives that can be provided through various CCA programs and services.
- However, these benefits were not included in the financial analysis, in order to present findings based solely on the merit of a CCA by itself.
- The financial model was based on the potential of a 5% reduction in the energy cost portion of the CCA customer bills. The financial model reflects that this level of customer savings is sustainable over time.

Sierra Valley Energy Authority CCA Program

Placer County and the City of Colfax have launched a CCA for Placer County through the Sierra Valley Energy Authority (SVEA) Joint Powers Authority (JPA). The SVEA JPA Agreement allows for eligible cities in Placer County to become voting members for the purpose of providing a CCA and a Property Assessed Clean Energy (PACE) program (more commonly known as the mPOWER program).

Placer County has provided funding for the CCA implementation which will be repaid from future SVEA revenues. The eligible cities have been invited by the County to join the SVEA and launch the CCA in their jurisdiction.

Specifically, the SVEA JPA agreement provides:

- No requirement of the member cities to advance costs
- No financial or legal recourse to the County or member cities
- Each city is entitled to a seat on the JPA Board
- Town residents and business will have a choice in who provides their energy

Consumer Choice

Joining the SVEA CCA program would provide Town residents and businesses with a choice of electric providers and energy supply. As indicated above, enrollment in the CCA is automatic for customers. Customers don't need to do anything to begin receiving the benefits of the CCA.

CCAs are required by law to provide four written notices to customers. Two written notices must be provided at 30 and 60 days prior to program conversion, and two written notices must be provided 30 and 60 days after program conversion. The notices must include instructions for opting-out of the CCA for those customers who wish to remain with PG&E. SVEA plans to provide additional outreach and information to ensure that customers have ample opportunity to learn more about the SVEA CCA program prior to program launch. Customers are able to return to PG&E without any disruption of service at any time. There are limitations on how often a customer can go back and forth between the CCA and PG&E which is likely to be once every twelve months.

Competitive Electricity Rates

The SVEA is committed to providing electric generation cost savings for customers. SVEA's customer electric generation rates are planned to be lower than those of PG&E. The County's financial analysis demonstrates the SVEA ability to provide lower electric generation rates. The SVEA has the advantage of not paying shareholder dividends, or income taxes that are required of investor-owned utilities. The CCA has the opportunity to purchase electric power at historically low rates, and to develop generation facilities which further stabilize rates. As a result, electric generation rates for SVEA customers are expected to be stable and decreasing over time. PG&E rates change several times a year, CCA's have generally adjusted their rates once per year, offering a greater measure of rate stability and certainty for CCA customers.

The County anticipates the SVEA electric generation rate savings to continue because PG&E's electric generation rates are projected to increase again in the near future. PG&E will still have the ability to change their rates on their electric distribution.

SVEA residential customers are estimated to realize approximately five percent reduction in monthly electric generation rates compared to current rates. Participating business customers are also projected to have a reduction in electricity costs of approximately five percent. Rate decisions will be made by the SVEA governing board.

Incentive Programs

Because PG&E will still provide SVEA customers with transmission and generation services, customers are still PG&E customers and will have access to energy efficiency, rebates and other programs provided by PG&E. Customers on Medical Baseline and CARE programs will continue on these programs without interruption.

In addition, the SVEA will operate its own energy efficiency and other programs. The SVEA will allocate a portion of its budget to local projects and programs based on local goals and priorities. The CCA may be able to offer a variety of energy efficiency programs that also include rebates and incentives, including a solar net energy metering (NEM) program. Ultimately the SVEA governing board will determine any additional programs to be offered.

Figure 4: CCA/PG&E Service Comparison Chart

Services Provided by PG&E <small>(source: PG&E website)</small>	Before CCE	With CCE
Electricity Transmission, Distribution, Maintenance, Repair and Outage Response	X	X
Meter Reading	X	X
Billing (including eBills and Automated Payment Plan)	X	X
Balance Payment Plans	X	X
Energy Efficiency Rebates	X	X
California Alternative Rates for Energy (CARE) and Medical Baseline	X	X
Solar Net Metering and California Solar Initiative	X	X
Residential Smart Rate	X	X
Services Provided by CCA		
Ratepayer choice		X
Local Control over Rates resulting in the Same or Lower Rates		X
Local Control over Expanded Energy Efficiency and Other Ratepayer Programs		X
Local Control over Electric Supply		X
Previous shareholder profits & income taxes retained in Placer County for ratepayer benefit		X

Considerations of Joining the Authority

Should the Town wish to participate in the program, Town staff and the Town Attorney would need to review the *Due Diligence and Financial Analysis*, and the SVEA JPA Agreement.

Legal Considerations for the Town

The SVEA JPA Agreement expressively provides for limited liability for its members, as well as its directors, officers, and employees of the SVEA. The Agreement states that:

“the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Members unless the governing board of a Member agrees in writing to assume any of the debts, liabilities or obligations of the Authority.”

This language in the Agreement protects the Town from actions or liabilities of SVEA. To further mitigate any potential legal risks to the participants, SVEA has stated in the Agreement that it:

“shall acquire and maintain such insurance coverage as is necessary to protect the interests of the Authority, the Members, and the public. The insurance shall also contain a written endorsement to such policy or policies, which names each of the [Voting Members] as additional insureds. The

Authority shall defend, indemnify, and hold harmless the Members, and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement."

Financial Considerations for the Town

The Authority feasibility and implementation costs have been advanced by Placer County. The County expects, and the Authority Agreement provides, that these expenditures will be reimbursed from SVEA revenues derived from customer charges once SVEA is serving customers. If the SVEA does not become operational, the County will not recover its costs, and the member cities are not obligated to reimburse the County under the terms of the Agreement.

The Town's financial risks are limited during the evaluation, implementation and operational stages of the SVEA. However, there are a few specific situations where the Town might incur costs if it chooses to withdraw from the JPA.

After formation and implementation of the SVEA, the agreement states that there may be continuing financial obligations to any member city that chooses to withdraw, or is involuntarily terminated by a two-thirds vote of the other member directors.

The Agreement specifically provides that a withdrawing or terminated member city:

"... shall remain responsible for any claims, demands, damages, or liabilities arising from the Member's membership or participation in the CCA Program through the date of its withdrawal or involuntary termination. . ."

The major financial obligation is for losses from the resale of power contracted for by the Authority to serve the Town's load. However, this section of the Agreement also explicitly provides that, upon notice of a member city's desire to withdraw, the SVEA is obligated to provide a minimum waiting period during which the member would be required to remain a part of the CCA program in order to withdraw without financial consequence. Thus, the Town is free to withdraw from the CCA program at any time and pay for the power already contracted for on its behalf, or remain in the program until such time that the Town has fully used, or that the SVEA has disposed of or otherwise utilized the Town's share of the contracted power. This provision provides the Town with the opportunity to terminate its participation in an orderly manner to avoid incurring costs to the Town.

Finally, the Agreement provides that a withdrawing Member is additionally responsible for costs or obligations associated with any specific program which the agreed to be a part of prior to the date of its withdraw.

Financial Considerations for CCA Customers

As stated above, customers in operational CCAs have enjoyed electricity cost reductions. Customers rejoining PG&E could face charges, exit fees, or re-entry costs should they choose to return to PG&E provided power after the initial conversion period. Subject to the SVEA Board approve, the SVEA may institute exit fees for any customer that chooses to

opt out after the 60-day free period. PG&E typically institutes both a re-entry fee and market rate energy charge for any customer returning to PG&E, and mandates a one-year commitment to remain with PG&E after returning.

Should customers choose to leave after the free opt-out period during the initial conversion, they could potentially face fees from both the SVEA and PG&E.

Regulatory Considerations

The CPUC oversees the creation and inception of all CCAs and promulgates all regulations that apply to energy generation and energy supply in the state. The CPUC is guided by the increase-in-utility-competition and customer-rate-reduction principles outlined in Public Utilities Code.

The CPUC and other state agencies also determine regulations for electric market transactions and the delivery of electricity on the electric grid. The *Due Diligence and Financial Analysis* considered compliance with all existing regulations. Since CPUC regulations affect all market participants, it is unlikely that new regulations would be implemented in a manner that would be less than orderly or disruptive.

SVEA Governance

Joint Powers Agreement

As discussed above, SVEA is a legally and financially separate entity from the jurisdictions of its members and those that it serves. The Authority will be governed by a Board comprised of one elected official serving as a Voting Member and one alternate Voting Member from each of SVEA's member cities and two members of the Board of Supervisors and one alternate. The Board will be responsible for setting electric rates, programs and policies.

Voting Structure

Each member city has one vote on behalf of their city, and the County is granted two votes, due to its share of electrical load. The Agreement does provide for an alternate voting procedure which is weighted by shares based upon the annual energy used by each member city or the County, in relation to each SVEA members' total energy usage. The weighted vote would only be used if a member is not satisfied with the outcome of an initial vote. The member may call for a second vote using the weighted shares method.

CEQA AND ENVIRONMENTAL COMPLIANCE

The action of a local government to join SVEA is an administrative action that will not result in a direct physical change to the environment or a reasonably foreseeable indirect change to the environment, and thus is not a project as defined by the California Environmental Quality Act (CEQA) Guideline Section 15378. CEQA Guidelines Section 15378(b)(5) states that a project does not include "Organization or administrative activities of governments that will not result in direct or indirect physical changes in the environment." Per CEQA Guidelines Section 15378, there cannot be a project unless the proposed action will result in "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."

Recommendation/NEXT STEPS

If the Town Council wishes to join, it must introduce an ordinance authorizing its intention to implement a CCA, and adopt a resolution approving the execution of the JPA agreement and appointing a Board Member and Alternate Board Member to the CCA JPA Board.

ORDINANCE NO.

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF LOOMIS AUTHORIZING THE IMPLEMENTATION OF A COMMUNITY CHOICE AGGREGATION PROGRAM

THE TOWN COUNCIL OF THE TOWN OF LOOMIS, STATE OF CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. FINDINGS. The Town Council of the Town of Loomis (the "Town") has investigated options to provide electric services to ratepayers within the incorporated area of the Town, with the intent of achieving: greater local control and involvement over the provision of electric services, competitive electric rates, the development of local, clean, and renewable energy projects, reduced greenhouse gas emissions, and the wider implementation of energy conservation and efficiency projects and programs; and hereby finds and declares as follows:

WHEREAS, the Town has evaluated the financial feasibility, assessed risk, and provided due diligence for a community choice aggregation ("CCA") program in the Town under the provisions of the Public Utilities Code section 366.2. The financial feasibility, assessed risk, and due diligence indicates that implementing a community choice aggregation program would provide multiple benefits including:

- Providing ratepayer choice of electrical service providers; and
- Increasing local control and involvement in and collaboration on electric rates and other energy-related matters; and
- Providing more stable and competitive long-term electric rates; and
- Optimizing local energy resources for local use; and
- Increasing local renewable generation capacity; and
- Increasing and optimizing energy efficiency and conservation projects and programs, including the mPOWER program, and becoming a Program Administrator for the local public goods charged collected in Placer County; and
- Increasing local energy independence; and
- Increasing local economic benefit derived from the optimization of local energy resources, energy conservation and efficiency projects, and local investment; and
- Reducing greenhouse gas emissions from electricity consumption in the Town; and

WHEREAS, the Town proposes enter into a Joint Powers Agreement creating a Community Choice Aggregation energy authority ("Authority"). Under Joint Powers Agreements, cities and towns within Placer County, and the County may participate in the CCA program by adopting a resolution related to the creation of an Authority and ordinance required by Public Utilities Code section 366.2; and

WHEREAS, the Authority will enter into Agreements with electric power suppliers and other service providers, and based upon those Agreements, the Authority will be able to provide power to residents and business at rates that are competitive. Upon approval by the California Public Utilities Commission of the implementation plan created by the Authority, the Authority will provide service to ratepayers within the unincorporated area of Placer County, the incorporated area of the Town, and within the jurisdiction of the other cities who have chosen to participate in the CCA program; and

WHEREAS, under Pubic Utilities Code section 366.2, ratepayers have the right to opt-out of a CCA program and to continue to receive service from the incumbent utility. Ratepayers who wish to continue to receive service from the incumbent utility will be able to do so; and

WHEREAS, on March 14, 2017 the Town Council held a public meeting at which time interested persons had an opportunity to comment on implementation of a CCA program in the incorporated area of the Town, and

WHEREAS, this ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to the CEQA Guidelines, as it is not a "project", as it has no potential to result in a direct or reasonable foreseeable indirect physical change to the environment. (14 Cal. Code Regs. § 15378(a)). Further, the ordinance is exempt from CEQA, as there is no possibility that the ordinance or its implementation would have a significant effect on the environment. (14 CAL. Code Regs. § 15061 (b)(3)). The City Clerk shall cause a Notice of Exemption to be filed as authorized by CEQA and the CEQA guidelines.

NOW, THEREFORE, the Town Council of the Town of Loomis does ordain as follows:

SECTION 1. The above recitations are true and correct and material to this Ordinance.

SECTION 2. Authorization to Implement a Community Choice Aggregation Program.

Based upon the forgoing, and in order to provide business and residents within the incorporated area of the Town with a choice of power providers and with the benefits described above, the Loomis Town Council shall implement a community choice aggregation program within the jurisdiction of the incorporated area of the Town of Loomis by participating as a group with other cities and towns as generally described above in a Community Choice Aggregation Joint Powers Agreement.

SECTION 3. This Ordinance shall be in full force and effective 30 days after its adoption, and shall be published and posted as required by law.

The foregoing Ordinance was enacted at a meeting of the Council of the Town of Loomis duly held on the 11th day of April, 2017, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAINED:

Mayor

ATTEST:

APPROVED AS TO FORM:

Town Clerk

Town Attorney

RESOLUTION 17-

A RESOLUTION OF THE TOWN OF LOOMIS AUTHORIZING THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE SIERRA VALLEY ENERGY AUTHORITY

THE TOWN COUNCIL OF THE TOWN OF LOOMIS (THE "TOWN"), STATE OF CALIFORNIA DOES HEREBY RESOLVE THAT:

WHEREAS, the Town is a duly incorporated Town of the State of California, organized and existing pursuant to the Constitution and laws of the State; and

WHEREAS, the County (the "County") and the Town of Loomis have formed a joint powers authority, the Sierra Valley Energy Authority (the "Authority"), under the provisions of Article 1 (commencing with Section 6500) of Chapter 5, Division 7, Title 1 of the Government Code of the State of California (the "Joint Powers Law"), for the purpose of providing assistance to the County and the Town, and any other public agencies that become members of the Authority from time to time, in accordance with the Agreement (as defined below) (collectively, the "Members") with the development and implementation of public and private sector energy and resource development and conservation programs under which local water energy and economic development needs and goals will be determined, and infrastructure programs will be planned, developed and administered, and with the financing and refinancing of capital improvement projects of the Members and the financing of working capital for the Members; and

WHEREAS, the County and the Town desire to approve the execution and delivery of an Amended and Restated Joint Exercise of Powers Agreement for the Authority for the purpose of providing for local control of energy resources, the adoption of programs to foster economic development, energy efficiency, and resource conservation, and to further define and describe the scope of powers to be exercised by the Authority; and

WHEREAS, counties and cities have the power under California law to aggregate electric load, to purchase and supply electricity for themselves and customers within their jurisdictions, by providing a Community Choice Aggregation Program, pursuant to California Public Utilities Code Sections 331.1 and 366.2; and

WHEREAS, counties and cities have the power under California law to enter into voluntary contractual assessments with property owners to provide financing for the installation of authorized improvements within their jurisdictions by providing Property Assessed Clean Energy ("PACE") Programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, Division 7 of the California Streets and Highways Code; and

WHEREAS, the County and the Town of Loomis have provided the opportunity for eligible cities to participate in a Community Choice Aggregation Program and a PACE Program; and

WHEREAS, to these ends, the Town Council desires to approve the execution and delivery of the Amended and Restated Joint Exercise of Powers Agreement for the Sierra Valley Energy Authority (the "Agreement") by and between the County, the Town of Loomis, and the Town of Loomis desires to become Voting Members under the Agreement.

NOW THEREFORE BE IT RESOLVED, by the Town Council of the Town of Loomis, State of California, as follows:

SECTION 1. The Town Council hereby specifically finds and declares that the actions authorized hereby constitute, and are with respect to, public affairs of the Town, and that the statements, findings and determinations of the Town are set forth in the recitals above and of the documents approved herein are true and correct.

SECTION 2. Amendment and Restatement of the Joint Exercise of Powers Agreement for the Sierra Valley Energy Authority. The Town Council hereby approves the Agreement under the Joint Powers Law, in the form on file with the Town Clerk. The Mayor is authorized and directed to execute, and the Town Clerk is hereby authorized and directed to attest and affix the seal of the Town to, the Agreement in the name and on behalf of the Town.

SECTION 3. Authorization to Make Necessary Filings. The firm of Jones Hall, A Professional Law Corporation, is hereby authorized and directed to cause to be prepared, executed and filed any and all reports, statements and other documents as may be required in order to implement the Agreement.

SECTION 4. Effective Date. This Resolution shall take effect immediately upon its passage and adoption by both the County and the Town.

PASSED AND ADOPTED this 11th day of April, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

ATTEST:

Mayor

APPROVED AS TO FORM:

Town Clerk

Town Attorney

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT FOR THE SIERRA VALLEY ENERGY AUTHORITY

THIS Amended and Restated Joint Exercise of Powers Agreement (hereafter "Agreement") amends and restates the Joint Exercise of Powers Agreement for the SIERRA VALLEY ENERGY AUTHORITY, (hereafter "Authority") originally entered as of September 9, 2015, (the "Original Agreement") which was by and between the COUNTY OF PLACER, and the CITY OF COLFAX, both public entities of the State of California. By this amendment and restatement it becomes a Joint Exercise of Powers Agreement by and between the COUNTY OF PLACER, the CITY OF COLFAX and the cities of Rocklin, Lincoln and Auburn and the town of Loomis within the County of Placer who become signatories to this Agreement (the "New Voting Members", and together with the County of Placer and the City of Colfax, the "Voting Members"), as well as those local agencies that become signatories to this Agreement as Associate Members, and relates to the joint exercise of powers among all of the signatories hereto either as Voting Members or Associate Members (hereafter collectively referred to as the "Members").

RECITALS:

- A. Whereas, each of the Members has a vested interest in the economic well-being of its respective jurisdiction and the region as a whole as well as energy efficiency and clean energy growth and development;
- B. Whereas, the Members desire to enter into this Agreement to provide for local control of energy resources, the adoption of programs to foster economic development, energy efficiency, and resource conservation, and to further define and describe the scope of powers to be exercised by the Authority;
- C. Whereas, the Members share various powers under California law, including but not limited to the power to aggregate electric load, to purchase and supply electricity for themselves and customers within their jurisdictions, and the power to enter into voluntary contractual assessments with property owners to provide financing for the installation of public and private improvements authorized within their jurisdictions;
- D. Whereas, the purposes for entering into this restated Agreement include, but are not limited to:
 - 1) Providing electric power and other forms of energy to customers at a competitive cost;
 - 2) Promoting long-term electric rate stability and energy security and reliability for residents through local control of electric generation resources and the overall power supply portfolio.
 - 3) Carrying out programs to reduce energy consumption;
 - 4) Stimulating and sustaining the local economy by developing local jobs in renewable energy; and
 - 5) Reducing greenhouse gas emissions related to the use of electric power and other forms of energy in Placer County and neighboring regions;

- E. Whereas, it is the intent of this Agreement to promote the development and use of a wide range of energy sources and energy efficiency programs, including but not limited to hydroelectric, biomass, landfill gas, conversion of waste-to-energy, solar, and wind energy production;
- F. Whereas, Pacific Gas and Electric and Liberty Energy are the investor owned providers of retail electric service throughout the Voting Member jurisdictions and a Community Choice Aggregator is authorized to aggregate electrical load served by such investor owned providers within its members' jurisdiction. Each of the Voting Members must adopt an ordinance electing to implement through the Authority a common Community Choice Aggregation pursuant to California Public Utilities Code Sections 331.1(b) and 366.2(12)(A).

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions herein, the Members hereto agree to establish a joint powers authority as follows:

Section 1. Authority for this Joint Exercise of Powers Agreement

This Agreement is made pursuant to Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California (commencing with Section 6500) relating to the joint exercise of power common to the counties and public agencies and other powers specified therein (hereinafter the "Act"). Under Sections 6505 and 6507 of the Act, the Authority is a public agency separate from its Members. As provided by Section 6508.1 of the Act, and Section 12 hereof the debts, liabilities or obligations of the Authority shall not be the debts, liabilities or obligations of the individual Members, unless the governing body of a Member agrees in writing to assume any of those debts, liabilities or obligations.

The Members are each empowered by the laws of the State of California to exercise, in their respective jurisdictions, the powers set forth herein, including but not limited to the power to aggregate electric load, to purchase and supply electricity for themselves and customers within their jurisdictions, and the power to enter into voluntary contractual assessments with properties owners for authorized improvements within their jurisdictions.

Section 2. Purpose of Agreement

The purpose of this Agreement is to establish an independent public agency in order to exercise powers common to the Members and other powers granted to the Authority under the Act, to study, promote, develop, conduct, operate, and manage energy, energy efficiency and conservation, and other energy-related programs, to exercise all other powers necessary and incidental to accomplishing these purposes, and to provide a Community Choice Aggregation (hereinafter "CCA") Program, pursuant to California Public Utilities Code Sections 331.1 and 366.2, and as further described in Section 10.

Without limiting the generality of the foregoing, the Members also intend for this Agreement to be used as a mechanism by which Voting Members and non-voting Associate Members may

authorize the Authority to provide Property Assessed Clean Energy ("PACE") Programs pursuant to Chapter 29 of the Improvement Bond Act of 1911, Division 7 of the California Streets and Highways Code ("Chapter 29"). The Authority may provide PACE Programs pursuant to Chapter 29 within the boundaries of each Voting Member as set forth in Section 10(C) herein, and within the boundaries of each non-voting Associate Member as set forth in Sections 16 herein. The Members intend that other agreements with Associate Members shall define the terms and conditions associated with the implementation of the CCA Program, the PACE Program, and any other energy programs approved by the Authority within the territorial jurisdiction of such Associate Members. As of the Effective Date of this Agreement, the Associate Members include the County of Nevada, County of Sacramento, City of Grass Valley, City of Folsom, City of Nevada City and Town of Truckee.

Section 3. Effective Date and Term

This Agreement shall be effective as an amendment and restatement of the Original Agreement, and the Authority shall continue to exist as a separate public agency under the terms of this Agreement upon execution by the County of Placer and the City of Colfax. This Agreement shall be in full force and effect until terminated in the manner herein provided, subject to the rights of the Members to withdraw from the Authority.

Section 4. Powers

The Authority shall have all powers common to the Members, and such additional powers accorded to it by law, including the power to develop and implement comprehensive energy and resource development and conservation programs, as described herein. Unless state or federal law provides otherwise, any facilities, buildings or structures located, constructed, or caused to be constructed by the Authority within the territory of the Authority shall comply with the General Plan, zoning and building laws of the local jurisdiction within which the facilities, buildings or structures are constructed and comply with the California Environmental Quality Act (CEQA). As required by Government Code Section 6509, the power of the Authority is subject to the restrictions upon the manner of exercising power possessed by the County of Placer.

The Authority is authorized, in its own name, to exercise all powers and do all acts necessary and proper to carry out the provisions of this Agreement and fulfill its purposes, including, but not limited to, each of the following powers, subject to the voting requirements set forth in Section 5C and Section 8:

- A. to make and enter into contracts;
- B. to employ agents and employees, including but not limited to an Executive Director;
- C. to acquire, contract, manage, maintain, and operate any buildings, infrastructure, works, or improvements;
- D. to acquire property by eminent domain, or otherwise, except as limited under

Section 6508 of the Act, and to hold or dispose of any property;

- E. to lease any property;
- F. to sue and be sued in its own name;
- G. to incur debts, liabilities, obligations and to issue bonds, and to make and enter into agreements and other documents of any nature whatsoever as may be necessary or convenient in the exercise of the powers provided under the Marks-Roos Local Bond Pooling Act of 1985, as amended, and other provisions of California law that authorize public agencies to issue bonds and incur indebtedness, including but not limited to loans from private lending sources pursuant to its temporary borrowing powers such as Government Code Sections 53850 et. seq.;
- H. to form subsidiary or independent corporations or entities, if necessary to carry out energy supply and energy conservation programs and to take advantage of legislative or regulatory changes;
- I. to deposit its money pursuant to Section 6505.5 of the Act and to invest its money which is not required for the immediate use of the Authority, as the Authority determines is advisable in the same manner and upon the same conditions as local agencies, pursuant to Section 53635 of the California Government Code;
- J. to apply for, accept, and receive all licenses, permits, grants, loans or other aids from any federal, state, or local public agency;
- K. to submit documentation and notices, register, and comply with orders, tariffs and agreements for the establishment and implementation of the CCA Program and other energy programs;
- L. to adopt rules, regulations, policies, bylaws and procedures governing the operation of the Authority ("Operating Rules and Regulations");
- M. to establish and operate a CCA program, and make and enter into service agreements relating to the provision of services necessary to plan, implement, operate and administer the CCA Program, including the acquisition of electric power supply and the provision of retail and regulatory support services;
- N. to establish and operate one or more PACE programs pursuant to Chapter 29, and to enter into one or more agreements, including without limitation, participation agreements, implementation agreements and joint powers agreements and amendments thereto to fulfill such programs both within and outside the jurisdictional boundaries of the Authority;
- O. to establish a non-voting "Associate Member" status that provides membership in the Authority to jurisdictions that are outside jurisdictional boundaries of the Authority's Voting Members, but within whose boundaries a PACE, CCA, or

other energy program is established and implemented by the Authority on behalf of the Associate Member. Said jurisdictions shall adopt one or more agreements (a "PACE Agreement", "CCA Agreement", or other energy program agreement, as applicable) on terms and conditions established by the Authority. The rights of Associate Members shall be limited solely to those terms and conditions expressly set forth in the PACE Agreement, CCA Agreement or other energy program agreement for the purposes of implementing the PACE Program, CCA Program or other energy program, respectively, within the jurisdictional boundaries of the Associate Member. Except as expressly provided for by the PACE Agreement, CCA Agreement or other energy program agreement, Associate Members shall not have any rights otherwise granted to Authority Members by this Agreement, including but not limited to the right to vote, the right to amend this Agreement and the right to sit on committees or boards established under this Agreement;

- P. to execute agreements for the purpose of authorizing the Authority to implement, manage and administer area-wide and regional programs in the interest of providing energy supply, development of energy generation, energy efficiency, resource conservation, local public welfare and other economically related energy programs. The costs incurred by the Authority in implementing a program, including indirect costs, shall be costs of the Authority and shall not be assessed to the Members, unless approved by the Governing Body of the Member.

Section 5. Governance and Internal Organization

- A. **Governing Board.** The governing body of the Authority shall consist of up to seven (7) person Board, consisting of two (2) members of the Placer County Board of Supervisors, and one (1) member each appointed by the Cities of Colfax, Rocklin, Lincoln, Auburn and the Town of Loomis within Placer County that becomes a signatory to this Agreement ("Board Member").

The Board of Supervisors from Placer County, and the City/Town Councils from the Cities/Town set out above shall respectively appoint such member(s) and not less than one alternate member. The term of office of each Board Member and respective alternate may be terminated at any time by the appointing Board of Supervisors or City/Town Council. The designated alternate shall have authority to attend, participate, and vote at any meeting of the Board whenever the regular member, for whom they are designed to act as an alternate, is absent from the meeting.

- B. **Quorum.** The majority of the members of the Board shall constitute a quorum. No action may be taken by the Board unless a quorum is present, except that less than a quorum may adjourn a meeting from time to time.
- C. **Powers and Function of Board.** The Board will exercise governance, policy guidance and oversight over the business and activities of the Authority, consistent with this Agreement and applicable law. Action by the Authority Board will be taken by majority vote of the Board Members present. However, as

described in Section 8, upon request of a Board Member, a weighted vote by shares will be conducted.

- D. Chairperson. The Chairperson and Vice Chairperson of the Board shall be selected by the Board from its members. The term of office of the Chairperson and Vice Chairperson shall each be one calendar year.
- E. Secretary. The Board shall appoint a Secretary to the Board who need not be a member of the Board, who shall be responsible for keeping the minutes of all meetings of the Board and all other official records of the Authority.
- F. Meetings. All meetings of the Board shall be held subject to the provisions of the Ralph M. Brown Act, Division 2, Chapter 9 of the California Government Code (hereafter, the "Brown Act"). The Board shall hold at least four regular meetings per year, but the Board may provide for the holding of regular meetings at more frequent intervals. The date, hour and place of each regular meeting shall be fixed by resolution or ordinance of the Board. Regular meetings may be adjourned to another meeting time. Special meetings of the Board may be called in accordance with the provisions of California Government Code Section 54956. Directors may participate in meetings telephonically, with full voting rights, only to the extent permitted by law.
- G. Bylaws. The Board shall adopt bylaws for the conduct of business that shall not be inconsistent with the provisions of this Agreement, and the laws of the State of California.
- H. Board Member Compensation. Board Members shall serve without compensation from the Authority. However, Board Members may be compensated by their respective appointing authorities. The Board, however, may adopt by resolution a policy relating to the reimbursement by the Authority of expenses incurred by Board Members.

Section 6. Executive Director and Other Staff

- A. Executive Director. The Board shall appoint an Executive Director for the Authority, who shall be responsible for the day-to-day operation and management of the Authority. The Executive Director may exercise all powers of the Authority, except the powers specifically set forth in Section 4, or those powers that by law must be exercised by the Board. The Executive Director shall hire and supervise any Authority employees or consultants.
- B. Executive Director Reports to the Board. The Executive Director shall prepare, no later than the 20th day of each first month of each fiscal quarter, a report to the Board on the operations of the Authority during the preceding fiscal quarter. The Bylaws shall specify the information to be included in the Executive Director's reports.

- C. **Services Providers.** The Executive Director may appoint one or more services providers to serve as the Authority's agent(s) for planning, implementing, operating and administering the PACE Program, the CCA Program, and any other program approved by the Board, in accordance with the provisions of a written agreement between the Authority and the appointed administrative services provider or providers (a "Services Agreement"). The appointed services provider may be one of the Voting Members. A Services Agreement shall set forth the terms and conditions by which the appointed administrative services provider shall perform or cause to be performed all tasks necessary for planning, implementing, operating and administering the PACE Program, the CCA Program and other approved programs. The Services Agreement shall set forth the term of the Agreement and the circumstances under which the Services Agreement may be terminated by the Authority. This section shall not in any way be construed to limit the discretion of the Authority to hire its own employees to administer the PACE Program, the CCA Program or any other program.
- D. **Independent Monitor.** The Board may appoint or contract for the services of an independent monitor to review programs operated by the Authority and to report to the Board.
- E. **Advisory Commissions, Boards or Committees.** The Board may establish any advisory commissions, boards, and committees as the Board deems appropriate to assist the Board in carrying out its functions and implementing the CCA Program, other energy programs and the provisions of this Agreement which shall comply with the requirements of the Brown Act. The Board may establish rules, regulations, policies, bylaws or procedures to govern any such commissions, boards, or committees.

Section 7. Treasurer and Auditor-Controller

The Placer County Treasurer shall act as the Treasurer for the Authority. The Treasurer shall be the depository of the Authority and shall have all of the duties and responsibilities specified in Section 6505.5 of the Act. The duties and obligations of the Treasurer are further specified in Section 9. The Auditor-Controller of the County of Placer shall be the Auditor-Controller of the Authority and shall make or contract with a certified public accountant to make an annual audit in compliance with Section 6505 of the Act.

Section 8. Special Voting Requirements and Voting Shares

- A. **Involuntary Termination or Amendment.** Action of the Board on the matters set forth in Section 14A (involuntary termination of a Member), or Section 18 (amendment of this Agreement) shall require the affirmative vote of at least two-thirds of the Board Members; provided, however, that for votes to involuntarily terminate a Member under Section 14A, the Board Member(s) for the Member subject to involuntary termination may not vote, and the number of Board Members constituting two-thirds of all Board Members shall be recalculated as if the Voting Member subject to possible termination were not a Voting Member.

- B. Eminent Domain. A decision to exercise the power of eminent domain on behalf of the Authority to acquire any property interest other than an easement, right-of-way, or temporary construction easement shall require a vote of at least two-thirds of all Board Members.
- C. Contributions by Members. The imposition on any Member of any obligation to make contributions or pledge assets as a condition of continued participation in the PACE Program, the CCA Program, or other energy programs shall require a vote of at least two-thirds of all Board Members and the approval of the governing boards of the Members and Associate Members who are being asked to make such contribution or pledge.
- D. Calculation of Voting Shares. If a request for weighted vote is made by any Board Member, each Board Member shall have a voting share determined by Annual Energy Use Divided by Total Annual Energy, multiplied by 100. "Annual Energy Use" means the annual electricity usage, expressed in kilowatt hours ("kWh") within the Member's respective jurisdiction, and "Total Annual Energy" means the sum of all of the Members Annual Energy Use. All measures of kilowatt hours shall be set using the electric load forecast upon which the current annual budget was based. If a Member has more than one Board Member, then the voting shares allocated to the entity shall be equally divided amongst its Board Members.

Section 9. Financial Provisions

- A. Fiscal Year. For the purposes of this Agreement, the Authority shall have such fiscal year from July 1 to and including the following June 30.
- B. Depository. All funds of the Authority shall be held in separate accounts in the name of the Authority and not commingled with funds of any Member or any other person or entity. All funds of the Authority shall be strictly and separately accounted for, and regular reports shall be rendered of all receipts and disbursements, at least quarterly during the fiscal year. The books and records of the Authority shall be open to inspection by the Members at all reasonable times. The Board shall contract with a certified public accountant to make an annual audit of the accounts and records of the Authority, which shall be conducted in accordance with the requirements of Section 6505 of the Act.
- C. Expenditures. All expenditures shall be made in accordance with the approved budget and upon the approval of any officer so authorized by the Board in accordance with its Operating Rules and Regulations. The Treasurer shall draw checks or warrants or make payments by other means for claims or disbursements not within an applicable budget only upon the prior approval of the Board.
- D. Budget. The initial budget shall be approved by the Board. The Board may revise the budget from time to time through an Authority Document as may be reasonably necessary to address contingencies and unexpected expenses. All subsequent budgets

of the Authority shall be approved by the Board in accordance with the Operating Rules and Regulations.

- E. **Funding of Initial Costs.** The County of Placer has funded certain activities necessary to implement the CCA Program. If the CCA Program becomes operational, these initial costs paid by the County of Placer shall be included in the customer charges for electric services as provided by Section 14 to the extent permitted by law, and the County of Placer shall be reimbursed from the payment of such charges by customers of the Authority. Prior to such reimbursement, the County of Placer shall provide such documentation of costs paid as the Board may request. In the event that the CCA Program does not become operational, the County of Placer shall not be entitled to any reimbursement of the initial costs it has paid from the Authority or any Member.
- F. **CCA Program Costs.** The Members desire that all costs incurred by the Authority that are directly or indirectly attributable to the provision of electric, conservation, efficiency, incentives, financing, or other services provided under the CCA Program, including but limited to the establishment and maintenance of various reserves and performance funds and administrative, accounting, legal, consulting, and other similar costs, shall be recovered through charges to CCA customers receiving such electric services, or from revenues from grants or other third-party sources.

Section 10. Implementation Action and Authority Documents

- A. Each Member shall adopt an ordinance or resolution in accordance with Public Utilities Code Section 366.2(c)(12) for the purpose of specifying that the Member intends to implement a CCA Program by and through its participation in the Authority.
- B. Each Member that wishes to participate in the CCA Program shall adopt a resolution expressing its desire to become a Member to this Agreement, and its intention to have the territory of the Member's jurisdiction included in the service territory of the CCA.
- C. Each New Voting Member that wishes to participate in the PACE Program shall adopt a resolution authorizing it to become a Voting Member under this Agreement. Execution by such New Voting Member of this Agreement shall constitute consent to Authority undertaking contractual assessment proceedings under Chapter 29 for all of the properties in such New Voting Member's incorporated area and to the contractual assessment financing of certain improvements (as enumerated from time to time in Chapter 29, "Improvements") by Authority, upon the request by and voluntary agreement of owners of such properties, in compliance with the laws, rules and regulations applicable to the Authority's PACE Program, and to the assumption of jurisdiction thereover by Authority for the purposes thereof. Execution by such New Voting Member of this Agreement shall also serve to authorize Authority to take each step required for it to provide contractual assessment financing for the Improvements, including the levying, collecting and enforcement of contractual assessments to finance the Improvements and the issuance and enforcement of bonds and other financing instruments to represent and be secured by such contractual assessments.

The New Voting Members shall not be required to adopt a PACE Agreement and shall not be subject to the rights and obligations set forth therein, but shall instead, upon becoming Voting Members hereunder, be subject to the rights and obligations expressly set forth herein.

The Authority may additionally provide PACE Programs pursuant to Chapter 29 within the boundaries of non-voting Associate Members, as described further in Section 16 herein.

- D. **Implementation Plan and Statement of Intent.** The Authority shall cause to be prepared an Implementation Plan and Statement of Intent meeting the requirements of Public Utilities Code Section 366.2 and any applicable Public Utilities Commission regulations. The Implementation Plan and Statement of Intent shall specify the service territory of the CCA to be within the boundaries of the Member jurisdictions that have taken the actions specified in A and B above. The Implementation Plan and Statement of Intent shall not be filed with the Public Utilities Commission until it is approved by the Board in the manner provided by Section 5.

If a City within the boundaries of Placer County adopts an ordinance and resolution pursuant to A and B above, expressing its desire to become a Member to this Agreement subsequent to the filing of the then most recently filed Implementation Plan and Statement of Intent, the Board shall direct the preparation and filing of a new or amended Implementation Plan and Statement of Intent to include the territory of the City as soon as reasonably practicable. The Board may require the City to pay the cost of preparation and submission of the Implementation Plan and Statement of Intent. Upon Public Utilities Commission certification of the new or amended Implementation Plan and Statement of Intent by the Public Utilities Commission, the Board shall take an action to approve the membership of the City. The City shall then be entitled to all rights under this Agreement, including a seat on the Board and voting rights pursuant to Section 5.A and Section 8.

- E. **Termination of CCA and PACE Program.** Nothing contained in this Article or this Agreement shall be construed to limit the discretion of the Authority to terminate the implementation or operation of the CCA or the PACE Program at any time in accordance with any applicable requirements of state law.
- F. **Authority Documents.** The Members acknowledge and agree that the affairs of the Authority will be implemented through various documents duly adopted by the Board through Board resolution. The Members agree to abide by and comply with the terms and conditions of all such documents that may be adopted by the Board, subject to the Members' right to withdraw from the Authority as described in Section 14.

Section 11. Records and Reports

The Board shall establish reporting requirements and direct staff to maintain such reports, including, but not limited to, funds and accounts as may be required by good accounting practice or by law. All books and records of the Authority shall be open to inspection at all reasonable times by any Member to this Agreement or its representatives. Annual audits of the Authority's

accounts and records shall be made by an independent CPA firm, and reports shall be filed in the manner provided in Section 6505 of the California Government Code.

Section 12. Debts, Liabilities and Obligations

The Authority is a public agency separate from the Members. Pursuant to Sections 6508.1 of the Act, the debts, liabilities or obligations of the Authority shall not be debts, liabilities or obligations of the individual Members unless the governing board of a Member agrees in writing to assume any of the debts, liabilities or obligations of the Authority. A Member who has not agreed to assume an Authority debt, liability or obligation shall not be responsible in any way for such debt, liability or obligation even if a majority of the Members agree to assume the debt, liability or obligation of the Authority. Should any debt, liability or obligation of the Authority not be waived or allowed payable through assets of the Authority, none of the County or City members shall be liable, except as provided by Government Code sections 895 through 895.8.

Section 13. Insurance and Indemnity

The Authority shall acquire and maintain such insurance coverage as is necessary to protect the interests of the Authority, the Members, and the public. The insurance shall also contain a written endorsement to such policy or policies, which names each of the [Voting Members] as additional insureds. The Authority shall defend, indemnify, and hold harmless the Members, and each of their respective Board or Council members, officers, agents and employees, from any and all claims, losses, damages, costs, injuries, and liabilities of every kind arising directly or indirectly from the conduct, activities, operations, acts, and omissions of the Authority under this Agreement.

Section 14. Withdrawal

- A. **Right to Withdraw by Voting Member.** A Voting Member may withdraw its participation in the CCA Program, effective as of the beginning of the Authority's fiscal year, by giving no less than 12 months advance written notice of its election to do so, which notice shall be given to the Authority and each Voting Member. Withdrawal of a Voting Member shall require an affirmative vote of its governing board.
- B. **Right to Withdraw By Voting Member After Amendment.** Notwithstanding Section 14A, a Voting Member may withdraw its membership in the Authority following an amendment to this Agreement adopted by the Board which the Board Member appointed as a Voting Member voted against provided such notice is given in writing within thirty (30) days following the date of the vote. Withdrawal of a Member shall require an affirmative vote of its governing board and shall not be subject to the twelve month advance notice provided in Section 14A. In the event of such withdrawal, the Member shall be subject to the provisions of Section 15B.
- C. **Continuing Liability; Further Assurances.** A Voting Member that withdraws its participation in the CCA Program may be subject to certain continuing liabilities, as described in Section 15B. The withdrawing Voting Member and the Authority shall

execute and deliver all further instruments and documents, and take any further action that may be reasonably necessary, as determined by the Board, to effectuate the orderly withdrawal of such Voting Member from participation in the CCA Program.

- D. Withdrawal of Associate Member. The rights of an Associate Member to withdraw from the Authority shall be governed by the applicable PACE Agreement or CCC Agreement.

Section 15. Termination

- A. Involuntary Termination of a Member. Participation of a Member in the CCA program may be terminated for material non-compliance with provisions of this Agreement or any other agreement relating to the Member's participation in the CCA Program upon a vote of Board Members as provided in Section 8A. Prior to any vote to terminate participation with respect to a Member, written notice of the proposed termination and the reason(s) for such termination shall be delivered to the Member whose termination is proposed at least 30 days prior to the regular Board meeting at which such matter shall first be discussed as an agenda item. The written notice of proposed termination shall specify the particular provisions of this Agreement or other agreement that the Member has allegedly violated. The Member subject to possible termination shall have the opportunity at the next regular Board meeting to respond to any reasons and allegations that may be cited as a basis for termination prior to a vote regarding termination. A Member that has had its participation in the CCA Program terminated may be subject to certain continuing liabilities, as described in Section 15B.
- B. Continuing Liability; Refund. Upon a withdrawal or involuntary termination of a Member, the Member shall remain responsible for any claims, demands, damages, or liabilities arising from the Member's membership or participation in the CCA Program through the date of its withdrawal or involuntary termination, it being agreed that the Member shall not be responsible for any liabilities arising after the date of the Member's withdrawal or involuntary termination. Claims, demands, damages, or liabilities for which a withdrawing or terminated Member may remain liable include, but are not limited to, losses from the resale of power contracted for by the Authority to serve the Member's load. With respect to such liability, upon notice by a Member that it wishes to withdraw from the program, the Authority shall notify the Member of the minimum waiting period under which the Member would have no costs for withdrawal if the Member agrees to stay in the CCA Program for such period. The waiting period will be set to the minimum duration such that there are no costs transferred to remaining ratepayers. If the Member elects to withdraw before the end of the minimum waiting period, the charge for exiting shall be set at a dollar amount that would offset actual costs to the remaining ratepayers, and may not include punitive charges that exceed actual costs. In addition, such Member also shall be responsible for any costs or obligations associated with the Member's participation in any program in accordance with the provisions of any agreements relating to such program provided such costs or obligations were incurred prior to the withdrawal of

the Member. The Authority may withhold funds otherwise owing to the Member or may require the Member to deposit sufficient funds with the Authority, as reasonably determined by the Authority and approved by a vote of the Board, to cover the Member's liability for the costs described above. Any amount of the Member's funds held on deposit with the Authority above amounts not required to pay any liabilities or obligations shall be returned to the Member. The liability of any Member under this section 15B is subject and subordinate to the provisions of Section 12, and nothing in this section 15B shall reduce, impair, or eliminate any immunity from liability provided by Section 12.

- C. **Mutual Termination.** This Agreement may be terminated by mutual agreement of all the Voting Members; provided, however, the foregoing shall not be construed as limiting the rights of a Associate Member to withdraw its participation in the CCA Program, as described in Section 14A.
- D. **Disposition of Property upon Termination of Authority.** Upon termination of this Agreement, any surplus money or assets in possession of the Authority for use under this Agreement, after payment of all liabilities, costs, expenses, and charges incurred under this Agreement and under any program documents, shall be returned to the then-existing Voting Members in proportion to the contributions made by each. If no such contributions have been made, then such surplus after payment of all liabilities, costs, expenses, and charges shall be distributed based on the weighted voting shares pursuant to Section 8D. However, no termination of this Agreement shall be effective until the full retirement of any outstanding debt. Any Voting Member may fund the retirement of the debt for the purpose of terminating the Authority.
- E. **Negotiations with Associate Members.** If the Voting Members wish to terminate this Agreement, or if the Voting Members elect to withdraw from the CCA Program following an amendment to this Agreement as provided in Section 14B, but two or more Associate Members wish to continue to participate in the CCA Program, the Voting Members will negotiate in good faith with such Associate Members to allow the Associate Members to become the Voting Members to this Agreement or to effect a transfer of CCA Program operations to another entity.

Section 16. Associate Members

With the approval of the Board, any qualified public agency (as defined by Section 6500 of the JPA law) may become a non-voting Associate Member of this Agreement for purposes of participating in the CCA Program. A public agency requesting such membership may apply by presenting to the Authority a resolution of the public agency approving of this form of participation.

Any qualified public agency (as defined by Section 6500 of the JPA law) may become a non-voting Associate Member of this Agreement for purposes of participating in the PACE Program upon (i) such qualified public agency (a) adopting a resolution expressing its desire to become a non-voting Associate Member to this Agreement and authorizing the implementation of a PACE

Program within the boundaries of its jurisdiction and (b) executing a PACE Agreement and (ii) the Board approving the qualified public agency as a non-voting Associate Member.

The date and terms upon which the applying public agency will become a non-voting Associate Member will be determined by the Board and set forth in a CCA Agreement or PACE Agreement, as applicable.

Section 17. Termination of Powers

The Authority shall continue to exercise the powers herein conferred upon it until termination of this Agreement, and thereafter shall continue to exercise only such powers as to enable it to pay and discharge all costs, expenses, and charges legally incurred hereunder, and to dispose of, divide and distribute any property required as a result of the joint exercise of such powers.

Section 18. Disposition of Assets; Property and Money

Upon termination of this Agreement under Section 14, all costs, expenses, and charges legally incurred by the Authority shall be paid and discharged; and the Authority shall sell such property as may be necessary and shall distribute to the federal or State government such property and funds as are lawfully required; the balance of such property and any surplus money on hand shall be distributed or returned in proportion to contributions made by the affected Members except to the extent otherwise agreed upon by the affected Members.

Section 19. Amendments

This Agreement may not be amended except by a written amendment approved by a vote of Board members as provided in Section 8. The Authority shall provide written notice to all Members of amendments to this Agreement, including the effective date of such amendments, at least 30 days prior to the date upon which the Board votes on such amendments. Any amendment required to add a new Voting Member shall only be executed by the Voting Members. Any amendment required to add a new Associate Member shall only be executed by the new Associate Member and the Authority.

Section 20. Severability

Should any part, term or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions of provisions shall not be affected thereby.

Section 21. Entire Agreement

This Agreement contains the entire agreement between the Members and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions or obligations, oral or written, between or among the Members relating to the subject matter of this Agreement that are not fully expressed in this Agreement. This Agreement may not be modified, changed, supplemented or terminated, nor may any obligation under this Agreement be waived, except as provided in Section 19.

Section 22. Counterparts and Effective Date

This Agreement may be executed in counterparts and be as valid and binding as if each Member signed the same copy. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative. The effective date of the Agreement shall be the date the second member has executed the Agreement.

WITNESS THE AGREEMENT HEREOF the date set opposite our respective entities:

EXECUTED ON

By 
Chairman, Board of Supervisors

COUNTY OF PLACER, a political
subdivision

And approved as to form



ATTEST:



EXECUTED ON

By 
Mayor, City Council

CITY OF COLFAX, a Municipal Corporation

And approved as to form _____

ATTEST:



TOWN OF LOOMIS, a Municipal Corporation

EXECUTED ON _____

By _____
Mayor, Town of Loomis

And approved as to form:

Town Attorney

ATTEST:

Town Clerk